REMARKS

This Amendment is in response to the Office Action mailed May 29, 2008. Claims 1 – 10, 12, 15 – 19, 22, 24, 33 – 41, and 66 – 72 were pending and the Office Action rejected all the claims.

Specifically, Claims 1 – 10, 12, 15 – 19, 22, 24, 33 – 41 and 66 – 72 were rejected under 35 U.S.C. § 112. The Examiner objected to the use of the phrase "product" in view of the phrase "row of ...product". In response, the claims have been amended to clearly state that a tote includes a plurality of de-cored products. Also, Claim 3 has been cancelled. With respect to the embodiment claimed in Claim 69, the Examiner is directed to the embodiment shown in Fig. 6B and the description thereof on pages 26 – 27 of the specification.

Claims 1, 2, 4, 5, 7 – 10, 12, 15, 16 – 17, 18, 19, 22, 33 – 41 and 66 – 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitchell et al. (U.S. Patent No. 6,112,429), in view of Hougham (U.S. Patent No. 5,316,778), in further view of Brown I (U.S. 20030126850), Brown II (U.S. Patent No. 6,298,865), and Garcia (U.S. Patent No. 6,626,192), further relying on Cress (U.S. 6,223,502) and Levey (U.S. Patent No. 5,566,695).

Claims 1 – 3, 5, 7, 15 – 19, 22, 33 – 41, and 66 – 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown I, in view of Brown II, Mitchell and Garcia. Claims 8 – 10 and 12 were rejected in further view of Hougham. Claim 6 was rejected in further view of Hererra (U.S. 200302117650). Claim 24 was rejected in further view of Terry (U.S. Patent No. 5,711,980).

Claims 1 and 33 have been amended to more particularly point out that the present invention places a plurality of de-cored products into a tote facing a side of the tote. The washing fluid flows through the de-cored end of each product and exits an opposite end of each product. The washing fluid may flow through by the de-cored products by virtue of the fluid

flow itself (Claims 1 and 70) or by virtue of the movement of the tote relative to the fluid in a tank (Claims 33 and 69). As previously noted, the prior art of record fails to disclose these claimed techniques.

While the Office Action admits that the present claims are not anticipated by any of the numerous cited references, the Office Action has combined these numerous references for supporting various obviousness rejections. However, the Office Action is based entirely on hind-sight reconstruction using the Applicants' teachings and claims as a guide. The Federal Circuit has repeatedly held such a rejection is improper.

The Applicants are also aware of the recent U.S. Supreme Court decision in KSR v. Teleflex, holding that the combinations of known elements can be found to be obvious, where there is no inventive skill required to make the combination. The KSR decision may have effectively weakened the prior "Teaching, Suggestion, Motivation" (TSM) standard. However, nothing in this decision appears to overturn the long-standing rule prohibiting hind-sight reconstruction. In other words, using the Applicants' own teachings and claims as a guide to combine random elements found in the prior art is still prohibited. Significantly, in the present case, the Office Action has combined several references in order to attempt to make a *prima facie* case of obviousness. Such a combination is improper.

In any event, the cited combination of references fails to disclose the present invention as claimed. Even under the KSR decision, to establish a *prima facie* case of obviousness, each and every element of a claim must still be found in the prior art. For the reasons set forth below, the cited prior art fails to disclose certain of the present limitations. The Office Action has failed to address this argument i.e. provide a justification for combining the numerous references, without using the present application as a guide.

Mitchell

As understood by the Applicants, Mitchell fails to disclose placing de-cored products into a tote, and aligning the de-cord ends against a side of the tote. As clearly shown in Fig. 2B of Mitchell reference, the core ends (the ends are not even "de-cored" ends) are placed towards the center of the tote, facing each other in two rows. In contrast, as shown in Figs. 6(A) and 6(B) of the present application, the de-cored ends are placed against the side of the tote (either in one or two rows as shown in the figures).

Moreover, since the products of Mitchell are not cored, the washing fluid cannot flow through the "de-cored ends" of the products.

Garcia

As understood by the Applicants, Garcia does not disclose a method for washing "de-cored" products. The Office Action has failed to provide a citation to any disclosure in Garcia that the products are de-cored before washing. Since the products are not de-cored, the ends are not placed in any special alignment to the totes (the baskets of Garcia do not seem analogous to the totes of the present invention). As such, no washing fluid can flow through the de-cored ends. Garcia merely discloses spraying water onto the produce from above and below (there is no disclosure of immersing the totes into a tank, as required by Claims 33 and 69).

Clearly, Garcia fails to disclose the specific limitations of the present Claims.

Hougham

The Hougham reference is directed to a technique whereby leafy vegetables have their leaves torn from the vegetable stems, and then the leaves are sorted into separate baskets. The separated leaves are then washed.

Hougham utterly fails to provide any disclosure to support the rejection of the present claims. In fact, most of the citations for support of the rejection do not make sense. For example, what is a "de-cored" end of a leaf, such that the fluid flow is directed to the de-cored end? The baskets are clearly not "totes", de-cored products are not arranged in any particular order, and the washing fluid does not pass through the product in any particular direction.

Brown I (U.S. 20030126850)

The Brown reference fails to disclose that the de-cored produce are arranged in any particular order in the totes. Also, since the products are later sprayed with water from "above and below" (para. [0043]), there is no disclosure that the washing fluid necessarily flows from the de-cored end to an opposite end. Furthermore, the Brown reference fails to disclose using a washing tank as claimed in Claims 33 and 69.

Combining these references fails to disclose the specific claim limitations in the currently pending claims. Particularly, these references do not disclose arranging the de-cored products in such a way that the de-cored ends face against a side of the tote. Nor do these references disclose that the washing fluid is specifically directed to flow through the de-cored end. Therefore, these references clearly do not anticipate the present claims. Since none of the references have the noted limitations, simply combining them (even using impermissible hindsight reconstruction) does not provide a disclosure of the specific limitations of the present claims. The addition of the Brown II, Hererra and /or Terry references do not overcome the deficiencies of the other references, as they similarly fail to disclose the specific limitations of independent Claims 1, 33, 69 and 70.

Despite the citation and combination of nine different references, the Office Action has failed to provide a specific citation to a reference which loads de-cored products into a tote with the de-cored edges facing against a side of the tote, and directing the washing fluid through the de-cored end. This factor alone tends to show that the present invention is not obvious in view of the prior art. Additional limitations not disclosed include conveying the tote through a wash tank with the de-cored ends in the direction of conveyance. Moreover, the references fail to disclose loading the de-cored products into two rows, with the de-cored ends facing the sides of tote.

It is thus believed that the present claims are now in condition for allowance. If the Examiner believes that a telephone conference would expedite this application, the Examiner is encouraged to telephone the undersigned attorney at the number listed below.

The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication and which may be required under 37 CFR §1.78 to Deposit Account No. 50-2603, **referencing Attorney Docket No. 351606.00500**. **A duplicate sheet is attached**.

Respectfully submitted,

REED SMITH LLP

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